



## **DIVERSION/DISCIPLINE COMMITTEE MINUTES**

**DATE:** May 18, 2011

**SITE:** Doubletree Hotel - Ontario  
222 North Vineyard Avenue  
Ontario, CA 91764

**MEMBERS PRESENT:** Dian Harrison, Chair  
Judy L. Corless, BSN, RN  
Erin Niemela

**MEMBERS ABSENT:** Richard Rice

**STAFF PRESENT:** Louise Bailey, M.Ed., RN, Executive Officer  
Stacie Berumen, Enforcement Division Chief  
Carol Stanford, Diversion Program Manager

The Chair called the meeting to order at about 9:07 a.m.

### **8.0 REVIEW AND APPROVE MINUTES:**

Approve/Not Approve: Minutes of March 10, 2011

**M/S/C: Moved by Erin Niemela, Seconded by Judy Corless, Carried**

### **8.1 Nursys Discipline Data Comparison (Scrub) Update**

The Probation Program continues to work on the Nursys discipline data comparison project and will continue to do so until all records have been reconciled against California's records.

Currently, 1,805 records have been reviewed on the active license list. Determination was made whether the cases warranted a request for the other state's discipline documents. This review resulted in 1,050 requests for out-of-state documents. The documents will be evaluated and a decision made as to the appropriate action needed.

Review of the inactive license spreadsheet is in progress and will continue until complete. Holds have been placed on 1,915 inactive records to alert staff when a nurse on the list attempts to activate their license. This alert will allow staff to immediately request and review the records to determine if out-of-state discipline documents are needed for possible action on the license.

The status of the documents reviewed:

Referred to the Attorney General	298
Pleadings Received	272
Notices of Defense Received	242
Referred to Cite and Fine	38
Closed Without Action (Action taken by CA (prior to 2000) but not reported to Nursys or information approved at time of licensure)	515
Settlement or Decision Pending	61
Surrender or Revocation	80
Probation or Reprimand	14

#### **UPDATE:**

The contract language was reviewed DCA legal counsel, the Executive Officer, and the Enforcement Division Chief. The language is now being incorporated into the Board's existing contract with NCSBN. Once the contract has been approved by all parties at the Board, DCA information technology staff will begin the process to send all of our licensing data to NCSBN.

#### **AG COSTS:**

As of March 31, 2011, the BRN as expended \$527,582.50 at the AG's office on the Nursys Scrub cases.

#### **8.2 Internet Disclosure Policy**

The Board of Registered Nursing (BRN) began posting discipline information on its web site in 2006. This was done in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The BRN provides this information to better inform and protect California's health care consumers.

BRN provides information on the internet to indicate any disciplinary actions and their status through a series of codes from our legacy computer system. The discipline documents are added to support and explain actions taken.

In the last year, BRN staff has received requests to remove discipline documents from our website for a variety of reasons such as: it has been many years since the action was taken, the conviction included in the disciplinary action has been dismissed, expunged, or sealed, it hampers a licensee's ability to find employment, or the licensee is harassed by co-workers.

Enforcement staff has asked the committee and board members for a policy regarding discipline record retention on the internet.

#### **FULL BOARD RECOMMENDATION ON SEPTEMBER 24, 2010:**

Issue returned to the Diversion/Discipline Committee to create a policy for discipline record retention on the internet.

#### **SUB-COMMITTEE RECOMMENDATION ON NOVEMBER 16, 2010:**

Outside materials were not provided at the sub-committee meeting and held for next Diversion/Discipline Committee meeting for review and discussion.

**COMMITTEE RECOMMENDATION ON JANUARY 5, 2011:**

Provide the document prepared by DCA Supervising Legal Counsel, Don Chang, on December 30, 2010, to the full board for consideration and review at the January meeting.

**FULL BOARD RECOMMENDATION ON FEBRUARY 2, 2011:**

The board members requested staff prepare a series of options for consideration after reviewed and approved by DDC at their next meeting in March 2011.

**FULL BOARD RECOMMENDATION ON APRIL 13, 2011:**

The board members adopted a policy for record retention which is attached.

**QUESTION FOR COMMITTEE:**

The Medical Board enforced their statutory requirement to remove documents from the web beginning on a certain date.

**STAFF RECOMMENDATION/DISCUSSION:**

The policy statement was provided to the Committee Members with the recommendation of January 1, 2012 as the implementation date. The committee was informed that if staff resources were available the policy would be implemented sooner.

**Approve/Not Approve:** Internet Disclosure Policy Statement with January 1, 2012  
Implementation Date

**M/S/C: Moved by Judy Corless, Seconded by Erin Niemela, Carried**

**8.4 Enforcement Program Update and Statistics – Out of order in committee materials****Staff**

In response to Executive Order, B-3-11 ordering a hiring freeze, we submitted three individual exemption requests for our limited term staff members near the end of March 2011. On May 9, 2011, our requests made it out of the State and Consumer Services Agency and over to the Department of Finance (DOF). It is hoped a request will be submitted for nurses prior to this committee meeting and an update can be provided. However, we continue to wait for the DOF to determine if DCA has already reached their required budget reductions so that our department, as a whole, would be exempt from the hiring restrictions. BRN has been charged with extremely strict case completion time frames yet we continue to lack the ability to fill the necessary, approved positions, or to backfill our existing vacancies.

All three limited term staff members have either been returned to their previous agency or left state service as of May 10, 2011, leaving the Enforcement unit only 13.5 staff members, plus the program manager.

With the hiring limitations imposed by the Governor's hiring freeze we advertised and the Enforcement Chief, Stacie Berumen, Enforcement Program Manager, Kathy Hodge, and retired annuitant Special Investigator, Joan Loftin conducted interviews in March and April 2011 for our special investigator positions in northern California. We interviewed lateral transfer candidates within the Department of Consumer Affairs and those who are eligible on the new open list. There

are three candidates with tentative employment offers undergoing background investigation with the Division of Investigation and we are verifying eligibility for three other possible candidates. Unfortunately, we have not had very much success in recruiting for a supervising special investigator and will continue to recruit for the position in northern and southern California.

We have advertised for the Staff Services Manager III position and our Executive Officer, Louise Bailey, hopes to conduct interviews during May 2011 so we can move forward with our new units and processes.

### **Program**

Approximately 850 license renewal holds have been placed on licensees for license expiration in March and April 2011, who have not complied with the retroactive fingerprint requirements and the BRN has no proof of submission. The Administration Unit worked with the Department of Justice (DOJ) to compare our list of licensees who do not have a fingerprint result to their database in late April 2011. DOJ plans to retransmit fingerprint results it was able to locate and retrieve for BRN licensees during the week of May 9<sup>th</sup>. After that we will send out letters to licensees in an effort to resolve the renewal holds before the licensee renews the license as time and resources permit.

The Department of Consumer Affairs budget office notified the legislature that the BRN would exceed its spending authority for the Attorney General's budget line item in early April 2011. The CPEI BCP included language which allows the BRN to ensure continuous funding for the AG's office so there will not be any "slow down" or "work stoppage" prior to the end of the current fiscal year. However, the BRN is projected to exceed our budgeted line item by 84% by the end of June 30, 2011. The Enforcement Chief prepared and submitted a BCP Concept Paper on May 6, 2011, requesting augmentation to the AG, OAH, and Evidence/Expert Witness Expense line items in order to maintain the level of workload being generated and ensure consumer protection is administered as quickly as possible.

Another BCP Concept Paper was prepared and submitted by the Enforcement Chief to request the additional positions which were not approved in fiscal year 2010/11 as requested by BRN. The BCP Concept Papers are for fiscal year 2012/2013.

The BRN Enforcement and Probation programs began preparing and serving default decisions coming out of the Oakland and San Francisco AG's offices as of December 25, 2010. Evaluation of the pilot project has been extremely limited as Enforcement has only received a few qualifying default cases since the pilot began. Staff has worked with Don Chang to define necessary documents to be included in the evidentiary packets and a process is in place for legal review and approval of all defaults prepared by both units. Due to the small number of defaults prepared during the pilot program we cannot make a determination whether it is appropriate to return all defaults to the BRN. We continue to prepare default decisions to give us an opportunity to collect more data to support the BRN resuming the responsibility of preparing defaults from all AG offices.

### **BRN Investigations**

We only have two retired annuitant investigators actively working our cases in Northern California. The Department of Personnel Administration approved the use of the Special Investigator classification for the BRN in January 2011. All complaints determined to need formal investigation

and prioritized as high or urgent are referred to the DOI regardless of whether the complaints meet the DOI case investigation criteria. Only routine case investigations continue to be held for BRN investigation.

We continue to refer our oldest cases back to DOI for investigation until our special investigators have gone through specialized training and are prepared to begin conducting investigations.

### **Statistics**

There are 726 DOI investigations and 450 BRN investigations pending completion. There are 1,164 cases pending at the AG's office which continues to remain at a very high level. The BRN continues to be the AGO's biggest client, surpassing the Contractor's State Licensing Board.

From July 1, 2010 to May 9, 2011, enforcement served 569 accusations.

Please review the enforcement statistics reports (attachment) which have additional breakdowns of information.

## **8.3 Probation Program Update and Statistics – Out of order in committee materials**

### **Staff**

The probation program has a vacant limited term Office Technician position and completed recruitment efforts to fill this position. With the limitations of only being allowed to hire DCA lateral transfer candidates, we did not receive any eligible candidates. The position has just over 17 months remaining of the 24 months allowed.

We will begin recruiting for a vacant probation monitor position now that DCAs Human Resources unit has resolved some of our backlogged position transactions.

### **Program**

The Probation Program continues to work on the Nursys discipline data comparison project and will continue to do so until all records have been reconciled against California's records. Updates will be provided at each DDC meeting.

The Probation Program is assisting the Legal Affairs Division with the review and update of the Recommended Guidelines for Disciplinary Orders and Conditions of Probation. They were last revised in 2002 and are long overdue for cleanup and to incorporate recent legislative and regulatory changes.

### **Statistics**

Below are the statistics for the Probation program from as of May 1, 2011.

Probation Data	Numbers	% of Total
Male	150	28%
Female	379	72%
Chemical Dependency	298	56%
Practice Case	171	32%
Mental Health	4	<1%
Conviction	56	11%

Probation Data	Numbers	% of Total
Advanced Certificates	40	8%
Southern California	285	54%
Northern California	244	46%
Pending at the AG	73	14%
License Revoked	6	1%
License Surrendered	5	<1%
Terminated	0	0%
Completed	18	3%
Total in-state probationers	529	

## 8.5 Diversion Program Update and Statistics

### Program Update

The diversion program manager, Carol Stanford, Maximus program director, Virginia Matthews and a DEC member who was previously a successful Diversion Program participant presented a Diversion Program Education Seminar on April 18<sup>th</sup> to more than 60 Human Resource Executives, Directors, and Chief Nursing Officers in southern California. The presentation outlined the history of the California Diversion Program and explained the purpose and responsibilities of different components of the program. Copies of the presentation are available upon request. The seminar was well received with a request that the same seminar be presented in northern California.

One of the case managers who testified at a hearing was invited by the administrative law judge to present information about the Diversion Program to her colleagues, Attorney Generals and district attorneys. Information regarding this presentation will be forthcoming at a later date. Another case manager presented information on the Diversion Program at UC Davis Medical Center. Several of the evaluations indicated the presentation was excellent and more hospitals need to hear about the program.

### Contractor Update

BRN diversion program staff, other diversion program managers, and DCA legal staff have been meeting with Maximus to outline any minor contract changes needed to conform to the requirements outlined in SB1441 and SB 1172.

A review of the relapse rates outlined in our quarterly report shows four consecutive quarters of a decrease in the amount of relapses that are occurring. We will continue to monitor these outcomes to determine if a trend is emerging.

On May 4, 2011, Maximus achieved "recommendation for registration" after completing the International Organization for Standardization (ISO) audit. The Maximus Diversion Program is the only program in the nation who has achieved this status. Virginia Matthews, Maximus Program Director, will present a brief report on this achievement and overview regarding upcoming events and developments.

### Diversion Evaluation Committees (DEC)

On April 14<sup>th</sup> two students from a nearby nursing program attended a DEC meeting in Southern California believing it was a regular BRN board meeting. The DEC members and diversion

program manager took the opportunity to educate the students about the Diversion Program and the dangers of substance abuse. The Maximus case manager provided information to the students and will schedule a presentation for the nursing program at a later date.

In response to a mass mailing done in February 2011, several physicians with expertise in substance abuse disorders have contacted the Board requesting the opportunity to serve as DEC members. We are thrilled with the response and support. Several physicians have already been interviewed and several more are scheduled for interviews in the near future. We have provided a list of new applicants in today's packet for your consideration.

There are currently 12 vacancies as follows: four Registered Nurses, five Physicians, and three Public members. Recruitment efforts continue.

### **Statistics**

Attached is the Monthly Statistical Summary Report for February and March, 2011. As of March 31, 2011, there were 1,545 successful completions.

### **8.5.1 Diversion Evaluation Committee Resignation**

In accordance with B & P Code Section 2770.2, the Board of Registered Nursing is responsible for appointing persons to serve on the Diversion Evaluation Committees. Each Committee for the Diversion Program is composed of three registered nurses, a physician and a public member with expertise in chemical dependency and/or mental health.

The following Diversion Evaluation Committee member has resigned for personal reasons. Efforts will be recognized and a letter of appreciation will be mailed out.

### **RESIGNATION**

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Marva Roddy	Nurse	Palm Springs	6
Shannon Chavez	Physician	San Diego	10
Elinore McCance-Katz	Physician	Oakland	13

### **8.5.2 Diversion Evaluation Committee Member Appointments & Reappointments**

In accordance with B & P Code Section 2770.2, the Board of Registered Nursing is responsible for appointing persons to serve on the Diversion Evaluation Committees. Each Committee for the Diversion Program is composed of three registered nurses, a physician and a public member with expertise in substance use and abuse disorders and/or mental health.

### **APPOINTMENTS**

Below are the names of candidates who were interviewed and are being recommended for appointment to the Diversion Evaluation Committees (DEC). Their applications and résumés are attached. If appointed, their terms will expire June 30, 2015

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Tonia Jones	RN	Orange County	4
Julie Gordon-Browar	RN	Fresno	5
Mason Turner	Physician	Fresno	5
Jacqueline Perry	RN	Palm Springs	6
Sam Shapiro	Physician	Burbank	8
Michael Parr	Physician	North Central	12

## REAPPOINTMENTS

Below are the names of members who are being recommended for reappointment to the Diversion Evaluation Committees (DEC). Their requests and résumés are attached. If appointed, their terms will expire June 30, 2015

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Patti Velez	Public	Ontario	9
Stephen Miller	Public	North Coast	11
Patricia Butler	Nurse	North Central	12

Below are the names of members who are being recommended for term extensions to the Diversion Evaluation Committees (DEC). Their requests and résumés are attached. If appointed, their terms will expire June 30, 2014

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Mike Mayo	Public	Fresno	5
Sheila Messina	RN	North Coast	11

Below are the names of members who are being recommended for term extensions to the Diversion Evaluation Committees (DEC). Their requests and résumés are attached. If appointed, their terms will expire June 30, 2013

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Gordon Ogden	RN	Fresno	5
Rosemary Miller	RN	Oakland	13

## TRANSFER

Below are the names of the DEC members who are being recommended for a transfer to another committee.

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Christopher Schaal	RN	Oakland	13
Glen Wedeen	Physician	Ontario	9

**Approve/Not Approve:** Appointments and Reappointments of Diversion Evaluation Committee Members



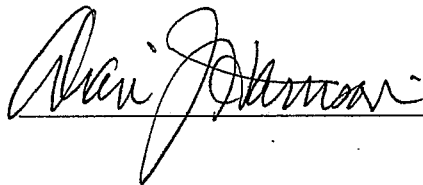
**M/S/C: Moved by Judy Corless, Seconded by Erin Niemela, Carried**

**8.7 Public Comment for Items Not on the Agenda**

No public comments received.

The Chair adjourned the committee meeting at 10:16 a.m.

Approved:

A handwritten signature in dark ink, appearing to read "Erin Niemela", is written over a horizontal line.